IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.6 OF 1996

1. Sadashiv Ganapati Shinde)
   Age : 31 years)

2. Ganapati Gunda Shinde)
   Age : 56 years)

3. Sou.Shalan Ganapati Shinde)
   Age : 51 years)

4. Dagadu Gunda Shinde)
   Age : 36 years)

   All residents of Chandoor,)
   Taluka : Hatkanangle,)
   District : Kolhapur).. Appellants
   (Orig.Accused)

Versus

The State of Maharashtra).. Respondent

Mr.Shekhar A.Ingawale for the Appellants.

Mrs.M.M.Deshmukh APP for the State.

Coram : Smt.Ranjana Desai,J

Date : 14th August, 2007.

Judgment :-

1. The appellants are original accused nos.1 to 4 respectively. They were tried in the Court of 4th Additional Sessions Judge, Kolhapur, in Sessions Case No.162 of 1994 for the offences punishable under Sections 498-A, 304-B, 306 read with section 34 of IPC. By his judgment and order dated

11.12.1995 the learned Sessions Judge found them guilty of the offence punishable under Section 498-A read with Section 34 of the IPC. On that count he sentenced them to suffer RI for one year each and to pay a fine of Rs.1,000/- each. In default of payment of fine, they were to suffer further RI for 3 months each. The accused were further found guilty of the offence punishable under Section 306 read with Section 34 of the IPC. On that count they were sentenced to suffer RI for 2 years each and to pay a fine of Rs.2,000/- each. In default of payment of fine, they were to suffer further RI for six months each. The substantive sentences were ordered to run concurrently. The accused were acquitted under Section 304-B read with Section 34 of the IPC. Being aggrieved by the said judgment and order, the appellants have preferred this appeal. For the sake of convenience, I shall refer to the appellants in this judgment as per their status in the trial as A-1 to A-4 respectively.

2. It would be advantageous to begin with the narration of facts of the case. According to the prosecution the daughter of Complainant (PW 1) Maruti Sathe was married to A1. She was the daughter of Maruti Sathe from his first wife Sakhubai who is the sister of A3 and A4. A2 and A3 are parents of A1, whereas A4 is the brother of A2. According to the prosecution after the marriage the

accused maintained deceased Sangeeta well for a period of one year. Later on, they started beating and ill-treating her as they wanted an amount of Rs.5,000/- from her father. They used to beat and ill-treat her and send her to the house of the Complainant. Whenever deceased Sangeeta used to come to her maternal house, she used to talk about the harassment meted out to her as well as illegal demand of money. At the time of Gudipadava festival prior to the incident in question, the deceased had been to her maternal house. At that time, she had informed the Complainant that she was harassed and ill-treated by the accused. The Complainant and his brother sent her back after trying to convince her. According to the prosecution on 13.4.1994 the Complainant was present in his house. At about 9.00 P.M. one wireman by name Maruti Shinde of village Chandoor came to his house and informed him that at about 5.00 P.M. there was a quarrel between the deceased and her husband i.e. A1 and at that time A1 beat her and since then the deceased was missing and therefore, he had come to the house of the Complainant to search for her. The Complainant told him that the deceased had not come to his house. Then Maruti Shinde went away. The Complainant and his relatives also went to village Chandoor to search for the deceased but the deceased could not be found. Ultimately, after mid-night on 14.4.1994 at 2.40 A.M. the Complainant lodged missing report

at Hupari police station. He mentioned in the said report that there was a quarrel between the deceased and her husband and that because of the harassment caused to her by her inlaws she had left the house. The said missing report was registered at Serial No.4/94. It is at Exhibit-18.

3. It appears that thereafter the search of the deceased was continued and during the search, on the well of one Lagonda Patil situate in Gat no.762, they found one Chumbal (ring of cloth) and one Butti (basket). The dead body of the deceased Sangeeta was found in the said well. The matter was then reported to Police Patil of village Chandoor i.e. PW 3 Raygonda Lagonda Patil. The Police Patil lodged his report on 15.4.1994 at 7.30 A.M. at Hupari police station. It is at Exhibit-22. The police then registered A.D.No.7/94. Inquest panchanama and spot panchanama were prepared. Post mortem was conducted on the deceased. Post mortem notes are at Exhibit-15. The cause of death is shown as "Asphyxia as a result of drowning". The dead body of the deceased was then handed over to her relatives from her maternal side. Funeral ceremony was performed on the dead body at her maternal place. Thereafter (PW 1) Maruti Sathe lodged his complaint which is at Exhibit-19. The complaint is registered on 15.4.1994 at 7.45 P.M. On the basis of this complaint offences under

Sections 498-A, 304-B, 306 read with section 34 of IPC were registered against the accused. After completion of the investigation, the accused came to be charged as aforesaid.

4. The accused pleaded not guilty to the charge. Their case is that they are involved in a false case with an intention to extract money from them.

5. In support of its case, the prosecution examined as many as 9 witnesses. The prosecution inter alia examined PW-1 Maruti Sathe, the Complainant and PW-2 Savala Sathe, the uncle of the deceased. The prosecution also examined neighbours and villagers of the deceased. After perusing the evidence on record the learned Sessions Judge was of the view that prosecution has proved its case beyond reasonable doubt. He therefore, convicted the accused as aforesaid.

6. I have heard the learned Counsel Mr.Ingawale appearing for the appellants/accused at some length. I have also heard the learned APP Ms.Deshmukh. With the assistance of the learned Counsel, I have gone through the depositions of the witnesses and the record of the case.

7. Mr.Ingawale the learned Counsel for the appellants/accused contended that the learned

Sessions Judge erred in convicting the accused. He submitted that there is total absence of cogent and credible evidence. He pointed out that the entire evidence is in the nature of hear-say evidence. He submitted that it is apparent from the evidence on record that Sakhubai-first wife of the Complainant was staying with the accused after the Complainant got married again. The evidence on record clearly indicates that Sakhubai and her daughter Sangeeta were all along staying with the accused and infact Sakhubai got the deceased married to her brother's son i.e. A1. Under these circumstances, it is inconceivable that the accused would ill-treat the daughter of their sister and drive her to suicide. The story of the prosecution is inherently improbable. He submitted that PW-1 Maruti Sathe has stated that one Maruti Shinde came to him and told him that there was a quarrel between the deceased and her husband and since then the deceased is not traceable. He contended that it was obligatory on the part of the prosecution to examine Maruti Shinde. The learned Counsel contended that the evidence of PW-1 Maruti Sathe that Maruti Shinde told him that the deceased and her husband had a quarrel is in the nature of hear-say evidence and it cannot be relied upon. In this connection he relied upon the judgment of the Supreme Court in **Bhugdomal Gangaram & Ors. V/s. The State of Gujarat, reported in AIR 1986 SC 906.** He submitted that

therefore, nothing is brought on record to establish that there was infact quarrel between the deceased and her husband and because of that quarrel the deceased committed suicide.

8. Mr.Ingawale submitted that so far as the alleged demand of money is concerned, on that also there is a discrepancy in prosecution evidence. While PW 1 Mr.Maruti Sathe has stated that when the deceased had come to their house at Gudipadava day, she complained about harassment and demand of money and he told PW 2 Savala to inform the accused that he will make arrangement for money. PW-2 Savala Sathe does not say that PW-1 told him so. He submitted that so far as the alleged harassment is concerned, the evidence of PW-1 Maruti Sathe and PW-2 Savala Sathe is in the nature of evidence of interested witnesses and therefore, it cannot be accepted at face value. He further pointed out that even the evidence of neighbours on the point of harassment is not consistent and does not inspire confidence. He pointed out that the FIR is recorded after the funeral of the deceased. The body was found on 14.4.1994 in the morning and FIR was recorded at 7.45 p.m. in the evening on 15.4.1994 after the funeral was over. Nothing prevented the Complainant from lodging the FIR immediately after the body was recovered. Therefore, the FIR is a concocted

document and it should not be accepted. He then pointed out that the prosecution has not examined Sakhubai the first wife of the Complainant. He submitted that the prosecutin witnesses have given evasive answers when they were asked whether Sakhubai was all along staying with the accused. He pointed out that PSI Jadhav I.O. in his evidence stated that he had recorded the statement of Sakhubai and other persons but they did not disclose anything which would attract offence under Section 498-A or 304-B of the IPC. He submitted that if really the deceased was being harassed, Sakhubai would have been the right person to depose about it in the Court and the fact that Sakhubai has not been examined, makes a dent in the prosecution story. He submitted that therefore, the conviction and sentence of the accused deserves to be set aside.

9. As against this, the learned APP submitted that the evidence of the prosecution witnesses is cogent and reliable. She submitted that the Complainant Maruti Sathe has all along maintained that the deceased was being ill-treated by the accused and members of his family. He has stated that there was a demand of Rs.5,000/- from the accused. The learned APP pointed out that in the earliest report made by the Complainant on 14.4.1994 i.e. missing report (Exhibit-18), PW-1 Maruti Sathe has stated that Maruti Shinde had come to him and told him that

his daughter was missing; that when he had gone to his daughter's home the members of the family had told him that there was a quarrel between the deceased and her husband and that thereafter the deceased had left the house and had not returned home. She pointed out that the Complainant's evidence is consistent with the FIR. She contended that the neighbours have also deposed about the harassment meted out by the accused to the deceased. The learned APP submitted that therefore, the conviction and sentence is borne out by the evidence on record and it may be maintained.

10. There is no dispute about the fact that dead body of the deceased was taken out from well in the early morning of 15.4.1994. The cause of death given by the doctor is "Asphyxia due to drowning". It is suggested by the defence that it is an accidental death. Whereas it is the case of the prosecution that the deceased committed suicide on account of harassment meted out to her by the accused. It is therefore, necessary to find out which version is true.

11. From the evidence on record it does appear that PW-1 Maruti Sathe had re-married. Defence has suggested that therefore, his first wife Sakhubai had left the house and was staying with the accused. It is also suggested that the deceased was also

staying with the accused and Sakhubai got the deceased married to her brother's son. Though PW-1 Maruti Sathe and PW-2 Savala Sathe have tried to deny the prosecution case that Sakhubai had gone to stay with her brother, these witnesses have been confronted with their police statements where they had stated that after the 2nd marriage of the Complainant, Sakhubai was residing at her maternal house at Chandoor. However, there is no cogent evidence on record that Sakhubai was continuously staying there and she got the deceased married to her brother's son. PW-1 Maruti Sathe has stated in his evidence that his daughter used to come to his house and complain that the accused were demanding Rs.5,000/-. They used to beat her and ill-treat her. It is pertinent to note that on this aspect there is no omission brought on record. It is pointed out that in the missing report the Complainant has not said anything about the demand of Rs.5000/-. It is true that in the missing report there is no reference to demand of Rs.5000/-. However, missing report which is lodged earliest in point of time i.e. at 2.40 A.M. on 14.4.1994 the Complainant has stated that the father-in-law and mother-in-law of Sangeeta used to harass her and therefore, she is found missing. In my opinion because there is no reference to the demand of Rs.5000/- in the missing report, the evidence of PW-1 Maruti Sathe cannot be discarded. At that

stage PW-1 Maruti Sathe must obviously be very anxious. He has stated that Maruti Shinde had come to enquire about his daughter, and told him that there was a quarrel between the deceased and her husband and thereafter she had left the house and she has not returned home. He has also stated that he had gone to her daughter's house and her daughter's father-in-law and mother-in-law told him that the deceased had been to the river ghat at 3.30 P.M. for washing clothes. There was a quarrel between the deceased and A1. They told him that the deceased came home alongwith clothes; she kept the clothes inside; left the home and thereafter she did not return. What is important is that in that report he has made a grievance that his daughter was ill-treated.

12. Even if it is assumed that the Complainant's first wife Sakhubai was maintained by the accused that would not dis-prove the prosecution case of harassment and ill-treatment of the deceased by the accused It is true that the Investigating officer has said that Sakhubai did not complain about any ill-treatment being given to her daughter by the accused. But in the nature of things if Sakhubai was being maintained by her brother and his family, she could never have complained against them to the police. Therefore, her conduct of not making any complaint to the police cannot be taken against her.

No purpose would have been served by examining Sakhubai because she would not have deposed against her mother. Prosecution cannot be faulted for not having examined her. But nothing prevented the defence from examining Sakhubai as their witness to establish that the deceased was treated well in the house of the accused. The fact that Sakhubai is not examined as defence witness by the accused is also in my opinion a very relevant circumstance.

13. PW-1 Maruti Sathe has stated that one Maruti Shinde had come to him and told him that there was a quarrel between the deceased and her husband. This statement of PW-1 Maruti Sathe is consistent with his missing report and the complaint. It is stated that under Section 60 of the Evidence Act, such evidence is not admissible and Maruti Shinde ought to have been examined. It is true that Maruti Shinde should have been examined by the prosecution but judicial notice must be taken of the fact that such witnesses never dare to come to the Court to depose in favour of the prosecution. Maruti Shinde comes from village Chandoor where the accused reside. Therefore, his non examination by the prosecution does not have an adverse impact on the prosecution case. Generally where a woman dies in a village where her matrimonial house is situated in suspicious circumstances, it is very difficult to get direct evidence. There is no reason therefore,

to discard the evidence of the father of the deceased when he says that a person from village Chandoor came to him and told him that his daughter was missing and that she had left the house after quarrel with her husband. This evidence could have been discarded if it was not consistent with the missing report and the FIR but the missing report and the FIR also mention that Maruti Shinde had told the Complainant about missing of his daughter. Therefore, this is not a concocted story.

14. In this connection it is necessary to refer to **Bhugdomal's case** (supra) on which reliance is placed by Mr.Ingawale. In that case the prosecution had relied on evidence of PW-12 to show that he had received information that a truck carrying prohibited liquor was going to proceed from Baroda to Ahmedabad and accused nos.3 & 4 and some other persons would be coming behind the truck in a taxi. However, the informant was not examined. The Supreme Court held that since the informant was not examined the evidence of PW-12 that he was informed that accused nos.3 & 4 would be coming behind the truck in a taxi is not admissible. Mr.Ingawale submitted that on the same lines is the evidence of the Complainant to the extent to which it refers to statement made by Maruti Shinde to him that the deceased had quarreled with her husband and had left the house and it is not admissible because Maruti

Shinde is not examined. In my opinion reliance placed by Mr.Ingawale on this judgment is misplaced. The said judgment will have to be confined to its own peculiar facts. There, the witness was testifying about the information given to him whether truck would be carrying liquor to Ahmedabad. PW-12 was the Deputy Superintendent of Police, State Traffic Department, Ahmedabad. Different parameters would be applicable to the appreciation of evidence of a police officer. In the case of police officer's evidence, the Court would generally insist on corroboration. I am concerned here with a case where the father is deposing about the missing of her daughter and the harassment caused to by her inlaws. He is the most natural witness. The missing report and the FIR lodged by this witness cannot be thrown overboard, because there is a ring of truth to his evidence. In any case even if part of evidence of PW 1 Maruti Sathe which refers to information given to him by Maruti Shinde is left out of consideration, the allegation made by P.W.1 Maruti Sathe about harassement meted out to his daughter are there in the missing report and FIR and his evidence is consistant with it.

15. Ideally, FIR ought to have been lodged immediately after the dead body was recovered. There is delay in lodging FIR. It is lodged after the funeral. However, in my opinion this

circumstance also cannot be taken against the prosecution because on the record there is the missing report which is lodged at 2.40 A.M. on 14.4.1994 and in the missing report lodged at the earliest the Complainant has stated that his daughter had left the house because of the harassment by her father-in-law and mother-in-law. Therefore, delay in lodging the FIR in my opinion does not affect the prosecution case. The evidence of PW-1 Maruti Sathe and all other witnesses will have to be examined keeping in mind the fact that they are rustic witnesses and if there are any minor discrepancies in their evidence which do not go to the root of the prosecution story, they will have to be ignored. I find Maruti Sathe’s evidence to be straight-forward and honest and I find no difficulty in relying on his evidence. It is significant to note that the accused did not even lodge a missing report.

16. PW-2 Savala Sathe is the brother of the Complainant. He has also stated that the deceased was being ill-treated by her in-laws. He has stated about the beating and the demand of cash of Rs.5000/-. His evidence is consistent with the evidence of PW-1 Maruti Sathe. Nothing has come in his cross-examination which can persuade me to discard his evidence.

17. PW-4 Dagadu Kamble has stated that on 13.4.1994 at about 5.00 to 5.30 P.M. he was collecting fodder in the land of one Pujari and at that time he saw the deceased proceeding towards the river. At that time the deceased had a basket on her head. This evidence establishes that the deceased had gone to the river. It corroborates the prosecution story that the deceased had gone to the river ghat and there she had a quarrel with her husband. PW-5 is a neighbour of the Complainant. She has stated that whenever the deceased used to come to her maternal house, she used to tell her that her husband, mother-in-law and father-in-law used to quarrel with her. She has also stated that the deceased also informed her about demand of Rs.5000/- made by her inlaws. Similar is the evidence of PW-6 Malan Sathe another neighbour of the Complainant. PW-7 Dayabai Sathe is a relative of Complainant Maruti Sathe. She has also deposed about ill-treatment given to the deceased and the demand of Rs.5000/- made by the accused to the deceased. According to her the deceased had told her about it. In my opinion, the evidence of these witnesses can safely be believed to come to the conclusion that the deceased was being harassed by accused A1, A2 and A3. So far as A4 is concerned, however, it cannot be said that he was also party to the ill-treatment which was given to the deceased. In fact, in the FIR complainant Maruti Sathe has stated that the deceased used to

tell her that her husband, her father-in-law and mother-in-law used to abuse and beat her because they wanted her to bring Rs.5000/- from her father and at their instigation Dagdu Shinde A4 used to abuse her and ask her to bring the amount. This statement made in the FIR, in my opinion, indicates that A4 was not harassing the deceased on his own. His involvement is doubtful. He will have to be therefore, acquitted. In my opinion, the prosecution has been able to prove charge under Section 498-A read with Section 34 of IPC against A1, A2 and A3. However, so far as offence under Section 306 i.e. abetement of suicide is concerned, the charge against A2 and A3 i.e. father-in-law and mother-in-law must fail because there is nothing on record to establish that suicide committed by the deceased was abetted by any acts of commission or omission of A2 and A3 on the material day. It appears that the quarrel between A1 and the deceased was the immediate cause of suicide of the deceased. It is pertinent to note that the post mortem notes do not indicate that there were any scratches on the body of the deceased suggesting that the deceased slipped and had an accidental fall. It is pertinent to note that the end of saree of the deceased was taken from the back and shoulder towards the front side at the stomach and it was tied at the waist portion. A portion of the peticot was also tied to the stomach. This is not consistent with the theory

of accidental death. The deceased appears to have prepared herself for suicide. Therefore, only A1 can be convicted for the offence under Section 306 simplicitor. In the circumstances, I pass the following order :-

O R D E R

1. The conviction and sentence of accused no.4 Dagadu Gunda Shinde under Section 498-A read with Section 34 of the IPC and under Section 306 read with 34 of the IPC is quashed and set aside. He is acquitted of the said charges. He is on bail. His bail bond stands cancelled.

2. The conviction and sentence of accused no.2 Ganapati Gunda Shinde and accused no.3 Sou.Shalan Ganapati Shinde under Section 306 read with Section 34 of the IPC is quashed and set aside. They are acquitted of the said charges. However, their conviction under Section 498-A read with Section 34 of the IPC is confirmed. Accused nos.2 & 3 were sentenced for offence under Section 498-A read with 34 of the IPC for one year each. I am informed that they were in jail for a period of 94 days each. Considering their advanced age for the offence under Section 498-A read with 34 of the IPC, they are sentenced to the sentence already undergone by them.

3. The conviction and sentence of accused no.1 Sadashiv Ganpati Shinde under Section 498-A read with section 34 of the IPC is confirmed. He is convicted for offence under Section 306 of the IPC simplicitor and is sentenced for two years RI for the same. Substantive sentences shall run concurrently. Accused no.1 is on bail. He shall surrender to his bail. Needless to say that he will get set off for the period already undergone by him. Appeal is disposed off accordingly.

(Smt.Ranjana Desai,J)

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

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1. Sadashiv Ganapati Shinde)
2. Ganapati Gunda Shinde)
3. Sou.Shalan Ganapati Shinde)
4. Dagadu Gunda Shinde)..Appellants (Orig.Accused)

Versus

The State of Maharashtra)..Respondent

Mr.Shekhar A.Ingawale for the Appellants.

Mrs.M.M.Deshmukh APP for the State.

Coram : Smt.Ranjana Desai,J

Date : 14th August, 2007.

. For the reasons separately recorded in the Judgment, I proceed to pass the following order :-

O R D E R

1. The conviction and sentence of accused no.4 Dagadu Gunda Shinde under Section 498-A read with Section 34 of the IPC and under Section 306 read with 34 of the IPC is quashed and set aside. He is acquitted of the said charges. He is on bail. His bail bond stands cancelled.

2. The conviction and sentence of accused no.2 Ganapati Gunda Shinde and accused no.3 Sou.Shalan Ganapati Shinde under Section 306 read with Section 34 of the IPC is quashed and set aside. They are acquitted of the said charges. However, their conviction under Section 498-A read with Section 34 of the IPC is confirmed. Accused nos.2 & 3 were sentenced for offence under Section 498-A read with 34 of the IPC for one year each. I am informed that they were in jail for a period of 94 days each. Considering their advanced age for the offence under Section 498-A read with 34 of the IPC, they are sentenced to the sentence already undergone by them.

3. The conviction and sentence of accused no.1 Sadashiv Ganpati Shinde under Section 498-A read with section 34 of the IPC is confirmed. He is convicted for offence under Section 306 of the IPC simplicitor and is sentenced for two years RI for the same. Substantive sentences shall run concurrently. Accused no.1 is on bail. He shall surrender to his bail. Needless to say that he will get set off for the period already undergone by him. Appeal is disposed off accordingly.

(Smt.Ranjana Desai,J)